

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.530 of 2015
& M.P.No.1 of 2015

Sivalingam

.. Petitioner

Vs.

1.Thandavan

2.Irusan

3.Angamuthu

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decretal order dated 13.01.2015 made in I.A.No.240 of 2014 in I.A.No.295 of 2010 in O.S.No.175 of 2006 on the file of the Principal District Munsif, Bhavani.

For Petitioner : Mr.R.Jayaprakash

For R1 : Mr.M.V.Venkataseshan

For R2 & R3 : No appearance

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 13.01.2015 made in I.A.No.240 of 2014 in I.A.No.295 of 2010 in O.S.No.175 of 2006 on the file of the Principal District Munsif, Bhavani.

2.The petitioner is third defendant, first respondent is the plaintiff and respondents 2 and 3 are the defendants 1 and 2 in O.S.No.175 of 2006 on the file of the Principal District Munsif, Bhavani. The first respondent filed the said suit against the petitioner and respondents 2 and 3 for partition & separate possession and to appoint Advocate Commissioner to divide the suit properties as such by metes and bounds. The petitioner and respondents 2 and 3 did not contest the suit. A preliminary decree was passed on 28.08.2012. The first respondent filed I.A.No.295 of 2010 for passing of final decree. The petitioner and respondents 2 and 3 did not contest the said application. An exparte final decree was passed on 29.08.2013.

3.The petitioner filed I.A.No.240 of 2014 to condone the delay of 117 days in filing the petition to set aside the exparte final decree. According to the petitioner, notice was not served on the petitioner in the final decree application. The petitioner has left his village to Salem 33 years ago and had settled down there. He came to know about the final decree passed from the respondents 2 and 3 and filed the present application.

4.The first respondent filed counter affidavit, contending that the petitioner was set exparte on 31.01.2012 and final decree was passed on 29.08.2013. The delay is more than 693 days as the petitioner was set exparte on 31.01.2012. He has not given any sufficient reason to condone the delay in filing the application to set aside final decree.

5.The learned Judge considering the averments in the affidavit, counter affidavit and Court records, dismissed the application.

6.Against the said order of dismissal dated 13.01.2015 made in I.A.No.240 of 2014 in I.A.No.295 of 2010 in O.S.No.175 of 2006, the present Civil Revision Petition is filed by the petitioner.

7.Heard the learned counsel for the petitioner as well as the first respondent and perused the materials available on record. Though respondents 2 and 3 entered appearance through counsel, none appeared on their behalf today.

8.From the materials on record, the reason given by the petitioner to condone the delay is that no notice in the final decree

proceedings was served on him and he has settled down in Salem 33 years ago, leaving his native village. From the impugned order of the learned Judge, it is seen that a notice was sent to the address given in the affidavit filed in the present application. The said notice was returned as refused and the same was affixed. The learned Judge also taking note of the fact that the petitioner has two ration cards, one at the address of his native village and another at Salem address and the fact that respondent refused to receive the notice and the same was affixed, dismissed the application. There is no irregularity or illegality warranting interference by this Court with the order of the learned Judge dated 13.01.2015 made in I.A.No.240 of 2014 in I.A.No.295 of 2010 in O.S.No.175 of 2006.

9.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

WEB COPY

22.12.2017

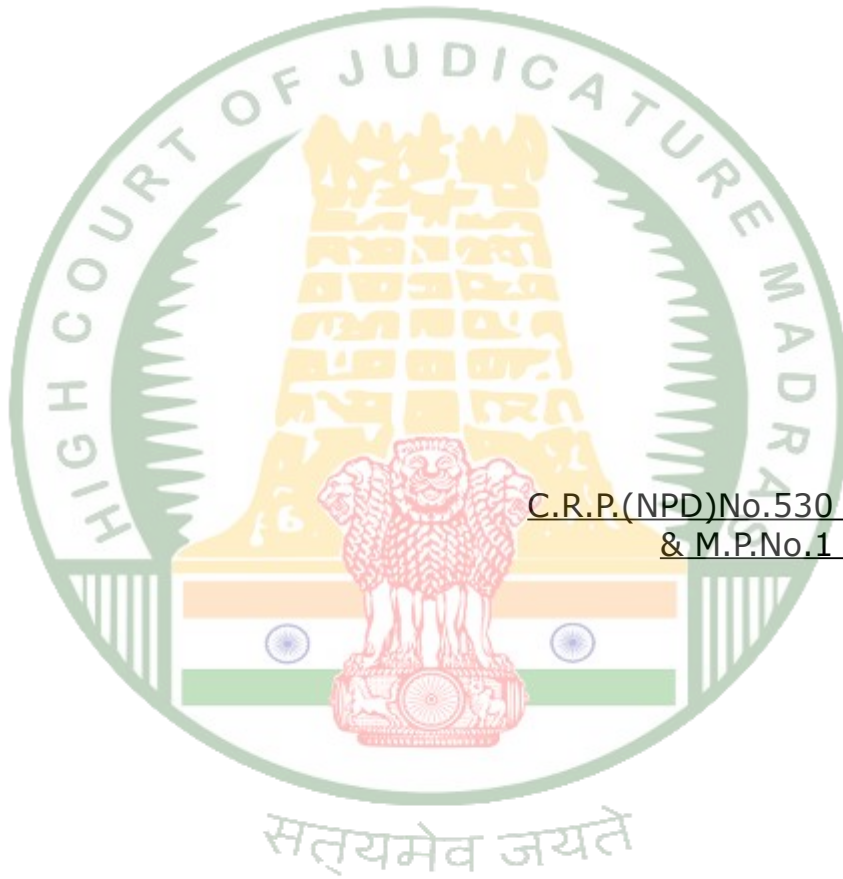
Internet: : Yes/No
gsa

To

The Principal District Munsif,
Bhavani.

V.M.VELUMANI,J.

gsa



C.R.P.(NPD)No.530 of 2015
& M.P.No.1 of 2015

WEB COPY

22.12.2017